

*** HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**
+ WRIT PETITION Nos. 25169 And 25177 of 2012

% 02-06-2017

WP.No.25169 of 2012

Vegi Jagadish Kumar

..PETITIONER

VS.

\$ The State of Andhra Pradesh, rep.by its Principal
Secretary
to Govt.Home Department, Secretariat, Hyderabad
and another.

..RESPONDENTS.

WP.No.25177 of 2012

V.B.Chalam

..PETITIONER

VS.

\$ The State of Andhra Pradesh, rep.by its Principal
Secretary
to Govt.Home Department, Secretariat, Hyderabad
and another.

..RESPONDENTS.

! Counsel For The Petitioner: Mavidi Rama Rao

^ Counsel For Respondents: Government Pleader for
Home

< Gist :

> Head Note :

? CITATIONS :

1. 2012 (1) ALT 579
2. 2010(4) ALT 377
3. 2014 Law Suit(Raj) 2365

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
WRIT PETITION Nos. 25169 And 25177 of 2012

COMMON ORDER:

W.P.No.25177 of 2012 :

These writ petitions are filed by the petitioners, who are the father and son, against the proceedings in C.No.408/MC/2011-12 and C.No.407/MC/2011-12, dated 23-06-2012, wherein and whereby the 2nd respondent refused to renew the Arms licence Nos.187/2/VSP, 45/2003/VSP of the petitioners respectively and also cancelled the said licenses. As such, both writ petitions are being disposed of through common order.

The brief facts which are necessary for disposal of the writ petitions are that the petitioner in WP.No.25177/2012 was granted Arms licence No.187/2/VSP and the same was renewed by the 2nd respondent from time to time and there was not even any single report against the petitioner in respect of the same. It is stated that the petitioner obtained Arms licence as he had threat due to property disputes among the petitioner and his brothers. In view of grenades attack on the petitioner, a criminal case was registered against his brother and his son-in-law and the

petitioner obtained licence for protection in the year 1964 and the same was renewed from last 48 years and the petitioner is in possession of revolver in pursuance to the arms licence and the same was renewed till 31-12-2011. As such, the petitioner made application in December, 2011 for renewal of said licence for further period of three years beyond 31-12-2011. The 2nd respondent rejected renewal of licence vide proceedings C.No.408/MC/2011-12, dated 23-06-2012 basing on the report submitted by Inspector of Police, II Town Police Station, Visakhapatnam City on the ground that three cases were registered against the petitioner and his son who is the petitioner in other writ petition and thereafter, the 1st respondent issued show-cause notice dated 07-07-2012 for cancellation of licence on the ground that petitioner is involved in three cases, which were registered against him under Sections 498-A, 324, 342 IPC. On that the petitioner filed explanation to the same. But without considering the same, by order dated 19-09-2012 cancelled arms licence on the self-same ground that the petitioner involved in three criminal cases, though there is no adverse report against the petitioner that he is misusing the licence.

WP.No.25169 of 2012:

The petitioner in this case is son of the petitioner in WP.No.25177 of 2012 and his case is that he was also granted arms licence vide Licence No.45/2003/VSP as he has life threat from the brothers of his father and son-in-law of his brothers father and there was attack in the year 1980 with hand made grenades and a criminal case was registered against the petitioner's uncle and his son-in-law. In pursuance to the same, the petitioner was in possession of the revolver and said licence was renewed from time to time till 31-12-2011. When the petitioner made application for renewal of licence and the same was rejected on the self-same grounds as in another writ petition and the petitioner was also issued show-cause notice and for the self-same grounds in the other writ petition, his licence was cancelled. Aggrieved by the same, the present writ petitions are filed.

After the writ petitions are filed, order cancelling the arms licence was passed and writ petitions were accordingly amended.

Counter affidavit is filed by the 2nd respondent in both writ petitions reiterating the grounds of rejection of renewal and cancellation of licence stating that the petitioners involved in three criminal cases in

Cr.Nos 66 of 2010 under Sections 498-A, 420, 376, 342, 506, 509 r/w.34 IPC (pending vide PRC.No.10 of 2010) and Cr.No.70 of 2010 under Section 498-A IPC pending trial vide C.C.No.1298/2010 and also Cr.No.72/2010 under Sections 498-A, 506, 323 r/w.34 IPC. All the three cases are pending due to interim orders granted by this Court and complainants in the above crimes are apprehending danger in the hands of the petitioners and if licenses of the petitioners allowed to be continued, it will result in threat to the complainants in above three criminal cases and possession of fire arms by individual resulting in insecurity to lives and properties of law abiding citizens and also disturb the peace and tranquility, if the petitioners allowed to continue to possess arms licence and on the self same grounds show-cause notice was issued and after submitting explanation, the licence was cancelled, as the licensee may misuse weapon and consequently it will cause harm to the complainants in the criminal cases registered against the petitioners or they may misuse the weapon as a means to commit any offence and hence the request of the petitioners for renewal of arms licenses was rejected by issuing impugned proceedings and also cancelled the licences.

Learned counsel for the petitioners submits that pendency of the criminal cases can not be a ground for refusal of renewal of arms licenses and cancellation of the same. He also submits that before passing impugned orders, no opportunity of hearing was granted to the petitioners. He also submits that Cr.No.72/2010 was registered on the complaint of one Vegi Naga Krishna Veni under Sections 498-A, 506, 323 r/w.34 IPC of II Town Police Station. Later the *de facto* complainant died on 30-07-2010 and the matter was amicably settled between the parties and father of the complainant withdrawn the complaint filed by deceased daughter in terms of compromise arrived in Lok-adalath at Visakhapatnam in PLC.No.20/2013, dated 04-09-2015. The petitioners paid a sum of Rs.3,00,000/- to the father of the deceased and the matter was closed. Even in Cr.No.70/2010, the complainant filed OP.No.25 of 2008 and the matter was settled and both parties filed a joint memo reporting compromise and accordingly, the OP was allowed and marriage between the complainant and petitioner in WP.No.25169 of 2012 was annulled. As such, the complaint in Cr.No.70 of 2010 is false and fabricated and as far as Cr.No.66/2010 is concerned, it was registered

basing on the complaint given by one Vegi Venkata Rani under Sections 498-A, 342, 506 r/w.34 IPC in II Town Police Station, Visakhapatnam, which is also false as the husband of complainant filed OP.No.71 of 2008 on the file of Senior Civil Judge, Bheemavaram against the complainant and the same was allowed on 28-07-2011 dissolving the marriage held between the complainant and said S.Subramanyam on 04-05-2003 and on the date of registering said complaint in Cr.No.66 of 2010, OP.No.71 of 2008 is pending and as such that cannot be a ground for renewal of licence and also for cancellation of licence. This also goes to show that crimes are registered basing on the false allegations. In support of his contentions, he relied on the judgments of **L.Raghunatha Reddy v. District Collector, Ananthapur District, Ananthapur¹**, **Syed Afzal Mehdi v. State of A.P. rep.by its Principal Secretary (Home), Hyderabad²** and **Mohd. Yakub v. State of Rajasthan³**.

On the other hand, learned Assistant Government Pleader for Home submits that the petitioners have alternative effective remedy under Section 18 of the Arms Act read with Rule 55 of Arms Rules, 1962 and that the petitioners are involved in three criminal cases and after

¹ 2012 (1) ALT 579

² 2010(4) ALT 377

³ 2014 Law Suit (Raj) 2365

filing charge sheets the same were numbered and the said cases are pending for trial before the criminal courts. As such, it is not desirable for grant of renewal of licenses in favour of the petitioners. He also submits that if licenses are renewed, there is threat to the complainants in the criminal cases and licenses were cancelled basing on the report of Inspector of Police and concerned Assistant Commissioner.

In view of rival submissions and pleadings, it is to be seen whether the 2nd respondent is justified in passing impugned orders refusing to renew licenses and also cancellation of licences. A reading of the impugned proceedings dated 23-06-2012 and 19-09-2012 goes to show that both impugned orders were passed stating that the petitioners are accused in three criminal cases which are referred to above and also basing on the reports submitted by the Inspector of police and Assistant Commissioner of police. But it is stated that no adverse remarks are found against the petitioners in the column of any adverse reports and recommendations for renewing the licenses as petitioners involved in criminal cases and the Assistant Commissioner forwarded the same to the Inspector of Police and show-cause notice was issued for cancellation of arms licenses on the self

same grounds and now the petitioners have filed material papers showing that petitions in both OP Nos 25 of 2008 and 71 of 2008 were allowed and even in the reports, it is not the case that the petitioners have threatened the complainants with arms.

In the judgment cited (1 supra) this court held as under:

“ Sub Section (3) of Section 17 of the Act, enables the licensing authority, by order in writing, to suspend or revoke a license. The conditions precedent for exercising this power are (1) the licensing authority is satisfied that the holder of the license is prohibited by the Act or by any other law for the time being in force from acquiring or possessing or carrying any firearm or ammunition or the holder is of unsound mind or, for any other reason, is unfit for a licence under the Act, or the licence was obtained by suppression of material information or on the basis of wrong information provided by the holder of the licence or if any of the conditions of the licence have been contravened or if the holder of the licence has failed to comply with a notice served on him under Sub Section (1) of Section 17 of the Act, requiring him to deliver up the licence or where the licensing authority deems it necessary for the security of public peace or for public safety it is essential to suspend or revoke the licence. An analysis of the facts narrated supra, as well as the impugned order, would make the position clear that rest of the circumstances narrated herein above except, perhaps, the last condition, are not attracted to the case of the petitioner. It is not the case of the State that the

petitioner is prohibited, in any manner, by the Arms Act or any other law for the time being in force, from acquiring or possessing or carrying arms and ammunition. He is not considered to be of unsoundmind. No other conditions have been traced, which render him unfit to hold a licence. It is not the case of the State that he has obtained the licence by suppression of material information or by furnishing wrong information. Nor was it the case of the State that he has contravened any of the conditions of the licence, or he violated the directive issued to surrender his license. Therefore, the proposed action of the licensing authority is liable to be confined only to the perspective of the possible breach of security of public peace or public safety at the hands of the licensee. Such an assessment must be based upon a stronger foundational facts than mere enumeration of the number of criminal cases in which he was involved, without bothering to realize the factors that failed to secure a conviction to the petitioner. Further, there is no order passed against the petitioner in the past requiring him to execute any bond for maintaining public peace or order in any area. Therefore, in my opinion, the licensing authority did not have adequate material before it to entertain a reasonably sustainable apprehension about the potential danger and risk at the hands of the petitioner for public peace and public safety. Denial either to grant a licence or revoking an existing licence, amounts to abdication of power conferred by the Statute. Mechanically one cannot repeat such an apprehension for denying the grant. Any such action amounts to acting contrary to the spirit and purpose of the very Statute. The nature of the crime alleged to have been committed by the petitioner in Crime No.25 of 2002 does not render the licensing authority to

draw a reasonable satisfaction that the security of the public peace or public safety are likely to be breached by the petitioner. Even otherwise, while Section 9 of the Act talks of sentence suffered upon conviction of an offence involving violence or moral turpitude, the Collector & District Magistrate, in departure of this requirement, is seeking to rely upon mere involvement in criminal case(s).

In the judgment cited (2 supra), this Court held as under:

“ A careful analysis of Sections 13 and 14 would go to show that a citizen is entitled as of right for an arms licence, if his case falls under Section 13(3) (a)(i) subject to his satisfying that his case does not fall in any of the grounds mentioned in Section 14 (1) (b). However, in other cases falling under Sections 3, 4, 5, 6, 10 and 12, an applicant should not only show that his case does not fall under any of the grounds mentioned in Section 14 (1) (b), but also that a good reason exists for grant of such a licence as envisaged under Section 13 (3) (b). Section 14(1) (b), postulates grounds for refusal. Sub-clauses (1) and (2) of Clause (b)(i) are not relevant in the present context. Sub-clause (3) of clause (b)(i) and sub-clause (ii) of clause (b) of Section 14 (1) offer two separate grounds for the competent authority to refuse licence. They are-(1) where the licensing authority has reason to believe that the person who required the licence is unfit for a licence or (2) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

It is indubitable that the right of a citizen to protect himself, his family and property are integral part of right to life guaranteed by Article 21 of the Constitution, subject to the limitations contained therein. In asserting such a right, every citizen has a

right to apply for an arms licence. While considering such application, the licensing authority shall not only keep in view the statutory provisions of the Act, but also the constitutional parameters relating to the applicant's fundamental right to life.

The facts in the present case are almost similar to the facts in the first cited decision and it is held that mere pendency of criminal case cannot be a ground for cancellation of licenses and when there was no adverse report regarding misuse of arms license by the petitioners. The licencing authority only on the basis of registration of crime, arrived at the conclusion that licensee may misuse the weapon as a means to commit any offence and cause harm to the complainant, when it is not the case of complainant in the above cases and also came to the conclusion that possession of fire arm will result in insecurity to the lives and properties of law abiding citizens and will also disturb the peace and tranquility, cancelled and refused to renew licence without any strong fundamental facts as held in the judgment cited (1) supra. The report of the Inspector of Police & Assistant Commissioner of Police also shows that there is no adverse report of misusing arms by the petitioners. There is no allegation in the above mentioned crimes that the petitioners threatened with

arms. One more aspect is that the petitioners have to be put on notice before rejecting renewal and cancellation of licences. Subsequent events go to show that in two cases the parties compromised.

As held by Rajasthan High Court, the licensing authority may revoke a licence if it deem necessary for the security of the public peace or for public safety. The power of suspension of Arms licence is necessary concomitant of power of revocation for effective control and regulation as also for the security of the public peace or public safety. Such a power has to be exercised with great circumspection. The satisfaction of the authority has to be objective and must be based upon relevant material. Mere fact that some reports have been lodged against the licence holder is not sufficient for canceling the licence.

In view of the same, the impugned proceedings are set aside and the 2nd respondent is directed to reconsider the matter after issuing notice and after affording opportunity of hearing to the petitioners in the light of above observations and pass fresh orders within a period of two months from the date of receipt of a copy of this order and communicate the same to the petitioners.

Accordingly, both writ petitions are allowed to the extent indicated above. As a sequel to the disposal of these petitions, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

02-06-2017

Note:LR copy to be marked.

B/o.
Nvl



